

Legally Defensible: Chiropractic in the Courtroom and After, 1907

WILLIAM S. REHM, D.C.*

From a landmark court verdict in 1907, fledgling chiropractic emerged with a distinctive philosophy and a newfound willingness to do battle in the courtroom and the state legislature. Dr. B.J. Palmer assumed almost a dictatorial authority as the self-styled "developer" of chiropractic. For the next two decades, the profession was dominated by a philosophy that many denounced as unabashed cultism. The story of this court proceeding, in which the new profession would itself be on trial, is related in the case of Wisconsin vs. Morikubo, Morikubo being an early graduate of the Palmer School who became the focus for B.J. Palmer's new survival mode.

On July 9 and 10, 1907, successive installments of an "exclusive" interview were published in the La Crosse (Wisconsin) *Tribune*, one of the town's three daily newspapers. The topic concerned the possibility of war between the U.S. and Japan.¹ The real issue of those times was the illegal entry of Chinese and Japanese laborers into the U.S. and its territories. Indeed, President Taft had ordered the U.S. fleet into the Pacific for the summer; still, most politicians regarded any possibility of actual conflict as unlikely as it was unwanted.² Nevertheless, there was a growing undercurrent of prejudice toward all Orientals, partly because of new immigration laws. But there was stronger influence on the public's perception — race-baiting by some segments of the American press.

Why would a small-town newspaper in competition with two other dailies create a discussion about war with Japan, something that couldn't happen? Why, indeed, unless its real purpose was to generate both an illusion and some business for itself. The "illusion" was in the content of its interview with Dr. Shegataro Morikubo, the town's first chiropractor, who also happened to be of Japanese ancestry.

Dr. Morikubo was a newcomer in La Crosse. He'd been in practice there only six months when the interview took place. He told the *Tribune's* reporter that he was born in Tokyo, where he had received most of his education including a doctorate from the Academy of Science. He emigrated to the U.S. to continue his education, and became an American citizen. Morikubo related his experience in the United States: He mastered English in the public schools on the West Coast and then entered a university as an advanced student in pathology, intending to prepare for a career. "The new science of chiropractic intrigued him," the paper said, and so he decided to enroll

at the Palmer School of Chiropractic in Davenport, Iowa, in March 1906. After just ten months of study there under Dr. Palmer and his son, he was qualified to graduate and enter practice. As to why he chose to settle in La Crosse, Dr. Morikubo told the *Tribune* that he was also fluent in German and felt this could be an advantage in pioneering chiropractic in the community.³

What did Shegataro Morikubo care about international politics? His only interest was to get established in La Crosse as a doctor of chiropractic. "Yes," he answered; he knew it would be difficult because of the present-day tensions. But the reporter became political and persistent: There were questions about the new immigration law aimed at Chinese and Japanese "invading" the U.S. work force, and the effects of a proposed trade embargo against Japan. Did he think the Japanese would fight a war with America? "I am an American citizen and want only that the U.S. and Japan work out peaceful solutions," Morikubo responded. "But would Japan defend itself?" "Yes," was the only possible answer to this politically rigged question.⁴

The "interview" was concluded. A nonstory was about to become an item, in two episodes. Morikubo must have realized then that his response to political questions could be misunderstood in this community of predominantly Central European ethnics.

Whatever might have been his apprehension when the articles first appeared, he could not have known that his notoriety was just beginning. Less than two weeks later, on July 22, Morikubo found himself answering to a magistrate in the La Crosse County jail. The *Tribune* reported the situation this way in a stunning headline:⁵

Jap chiropractor arrested today. Charged with practicing without a license. Jap will test State law

Now the State was showing an intense interest in Dr. Morikubo. Was this the stuff of a conspiracy or a bizarre

*Executive Director, Association for the History of Chiropractic.

Paper delivered at the Sixth Conference on Chiropractic History, June 7, 1986, Palmer College of Chiropractic, Davenport, Iowa.

Correspondence to: 4920 Frankford Avenue, Baltimore, Maryland 21206.

coincidence? Did the *Tribune* intend to create suspicion with its "interview" of Morikubo? The answer became clear as the *Tribune* now twisted Morikubo's responses. He appeared to be flatly trapped by his own answers to the double-edged questions two weeks earlier. The *Tribune's* race-baiting became overt as it characterized Morikubo's reaction to being arrested. "I am an American citizen duly naturalized and insist upon my American rights and liberties," said the little Jap with flashing eyes to this reporter." The derogatory term "Jap" was repeated several times in the account (reminiscent of World War II epithets directed against even the most loyal Japanese-Americans). In 1907, the implications of "unlicensed Oriental doctor" were probably irresistible.

The arrest warrant sworn out by Dr. W.T. Sarles, chairman of the State Medical Board, specifically charged Morikubo with illegally practicing medicine and surgery, and osteopathy. Pleading not guilty to all charges, he was released on bail. But he would need an attorney for a court arraignment set for July 29.

What happened next not only rescued Shegataro Morikubo from his obvious isolation, but also would change the course of chiropractic history.

There was no time to lose. Morikubo's arraignment was imminent. It was necessary to find a lawyer who was sensitive to the particular needs of minorities as well as to obtain both financial backing and expert support to defend chiropractic in the most important legal test of its short history.

The latter help came from Dr. B.J. Palmer, President of the Palmer School of Chiropractic and Secretary-Treasurer of the new Universal Chiropractors Association (UCA).

Historians and other writers have caused confusion about the origins of the UCA; this can be considered an attempt to set the record straight. Started as a legal protection society, the UCA would be the dominant organization in chiropractic until the "tempestuous" Chicago convention of 1925. In his 1931 book, Turner said this in a footnote:⁶

The Universal Chiropractors Association was organized in 1906 in the basement of Palmer School, 828 Brady Street, Davenport, a year after the school had been moved to that location. The project was conceived by Hod Norton, Ernest Erz, B.J. Palmer and about sixteen others. A chiropractor had been arrested in La Crosse, Wisconsin, "for practicing without a license," and there was no money for his defense. It was realized that the danger was common to all.

But Turner was wrong in believing that it was the Morikubo case that led to UCA's establishment. This apparent error has been repeated by others ever since.

Morikubo was not arrested until July 22, 1907. That the UCA was formalized sometime in 1906 is historically acceptable if only for the reason that a legal cloud had been hanging over B.J. and the Palmer School since 1903. (In chiropractic's first legal encounter, a county grand jury ruled to indict the Palmer Infirmary under the new Medical Practice Act in Iowa. It was D.D. Palmer, not B.J., who was finally jailed when the case was tried three years later under circumstances that remain an intriguing historical puzzle.) For the Morikubo trial of 1907, defense funds seemed to be available almost immediately, suggesting the existence of some sort of organization.

Palmer was quick to respond to Morikubo's plea for help. Arriving in La Crosse early the next afternoon (probably July 23), his first task was to select a lawyer for the upcoming arraignment and plot a trial defense. Again, earlier literature becomes confusing. Such an important decision could not be left to mishap or plain intuition. Yet, Lerner in his otherwise exhaustive investigation of this period, waxed romantic by suggesting that the linking of Attorney Tom Morris and the Morikubo case was "destiny."⁷

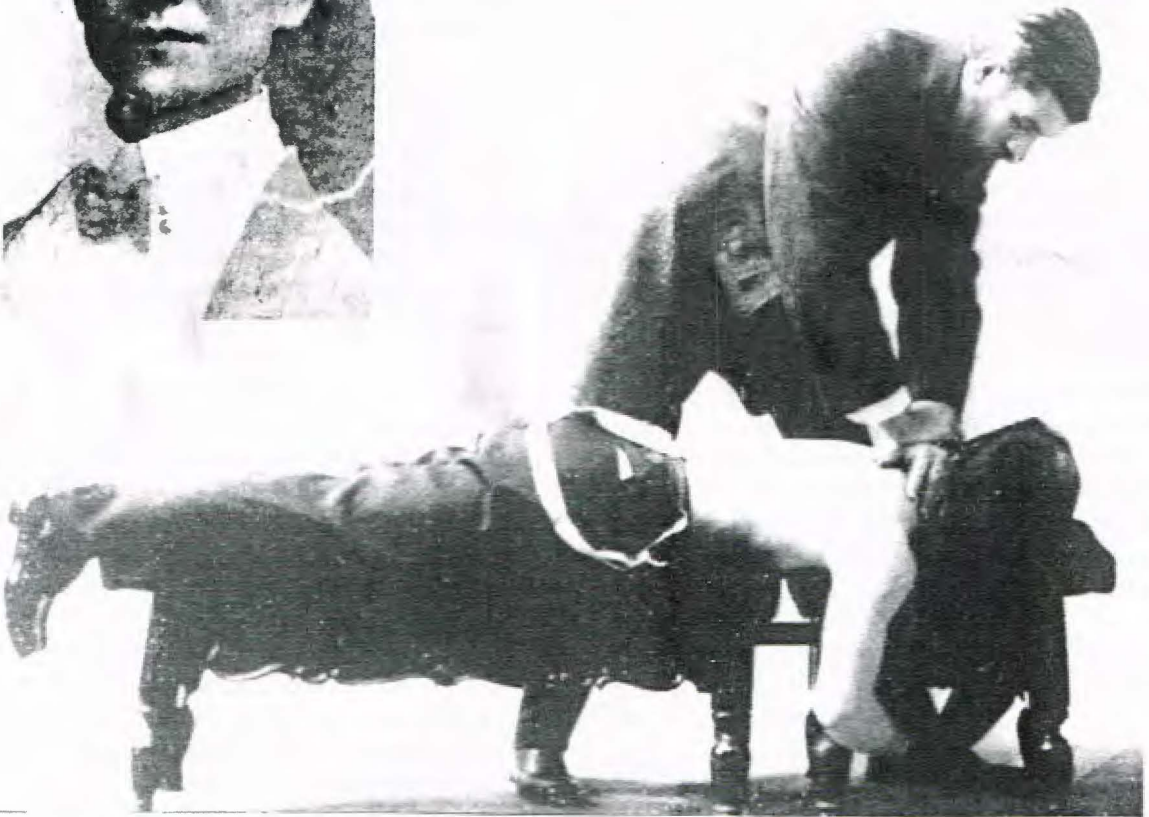
Shegataro Morikubo had been a resident of La Crosse long enough to know the reputation of that county's state senator, if B.J. hadn't already known it.

Tom Morris, the senior partner of the law firm of Morris and Hartwell, was a household name in Wisconsin. An honors graduate of the University of Wisconsin (Madison) Law School in 1899, Morris had served with distinction as the La Crosse County district attorney from 1900 to 1904, and was currently serving in the legislature, where he was given the principal credit for establishing the country's first teacher's college (1905). Politically, Morris was an ardent "progressive" and a devoted follower of Governor Robert La Follette. "One of his law partners described him as the 'liberal' member of the firm who, when discussing a particular case, always insisted that the important question at stake was not 'What is the law?' but rather 'What is right?'" Morris had a reputation for opposing what he considered to be selfish interests — the railroads, the rich, and the "stalwarts" of the Republican Party.⁸

While it is inconceivable to accept the notion that "destiny played a hand," Lerner insists that Palmer's choice of an attorney was a spontaneous one from the La Crosse telephone directory.⁹ For whatever reasons Morris was selected, the most important fact is that he was, as the evidence will show.

Morris pleaded his client "not guilty" at the arraignment. The trial was set for August 13, 1907. Morikubo was forbidden to engage in any further "illegal activities" until the court's verdict. There were only two weeks to prepare.

What kind of defense could be mounted in just two weeks? And what was the public record of the fledgling



Shegataro Morikubo (1880?-1933) occupied a significant footnote in early chiropractic history, becoming the center of a courtroom drama that set the stage for decades of legal defense of its practitioners. The Founder, D.D. Palmer, used "The Jap" with its racist connotations in illustrating his 1906 book (above). Morikubo was listed among the 1906 PSC graduates as a D.O., one of seven osteopaths listed among the 36 graduates of that year, but there is no reference as to where he studied osteopathy.



Tom Morris, left, former lieutenant governor of Wisconsin, had his political career aborted after his Catholicism became an issue in his quest for the governorship. After the Morikubo court victory he became counsel to B.J.'s Universal Chiropractors Association and a force in emerging chiropractic politics.

chiropractic profession in 1907, claiming no more than 500 disciples and an embryonic literature? The profession had no legal standing in any jurisdiction. Although the Palmer School was dominant, a handful of small schools existed.

It is useful to recall why B.J. and not his father (D.D. Palmer, the founder of chiropractic) headed the school in Davenport. Always quarrelsome, the elder Palmer precipitated his own downfall as the profession's unchallenged leader. In 1903, he chose to leave Davenport to escape the jurisdiction of the court in a civil matter he surely would have lost. By naming his son acting president, D.D. was protecting the assets of the school. Although he was one of the founder's first fifteen graduates, B.J. Palmer was only 21 years old when he took charge of the school in his father's place, a matter that would become an issue in the profession.

Proclaiming himself "adjuster-in-chief" of the Palmer Infirmary, it was B.J. who ended up on the legal butcher block in 1903; but it was "Old Dad" (as he preferred to be called) who became chiropractic's first martyr. Offering no defense at his 1906 trial, except for one legendary outburst, D.D. Palmer was convicted and sentenced to a term of 105 days in the Scott County jail. Unaccountably, B.J. was not called to testify even though he had been named in the same indictment. Released after serving 23 days and paying the full fine of \$350, Old Dad left Davenport again to brood over the indignity. But the prohibition against the Palmer Infirmary continued.¹⁰

And so it was that the young Bartlett Joshua Palmer also found himself isolated in 1907, but in a position that would place him in the forefront of the profession and the center of endless controversy.

In preparing a defense for the Wisconsin trial, it was obvious to Tom Morris that the State seemed to hold the winning cards. There was no legal precedent for Morris to build upon in light of the fact that chiropractic's founder had been unable to defend himself against the State of Iowa just a year earlier. Morris also knew that he would have difficulty explaining to the court why the founder was on record as opposing any state regulation of chiropractors. (In 1905, Palmer personally intervened to prevent the legalization of chiropractic in Minnesota as a separate and distinct profession.) Now, in Wisconsin, the future of chiropractic hung in the balance.

What was the genius of Tom Morris that in two weeks he would build a defense for a seemingly hopeless cause and bewilder the prosecution with the force of his argument?

The salvation of this case would not be the "expert testimony" of Dr. B.J. Palmer, who had never before testified in a court trial. B.J. must have quietly seethed when Tom Morris found all of his help in the scholarly writings of none other than his personal enemy, Dr. Solon Massey Langworthy.

Young Palmer's dislike of Langworthy was an extension of D.D.'s. A graduate under Old Dad in 1901, Langworthy soon opened a rival institution — the American School of Chiropractic — in Cedar Rapids, Iowa. In the 1903-04 period, after D.D. had departed from Davenport the first time and B.J. Palmer was under indictment, the Palmer school (then known as the Institute and Chiropractic Infirmary) went into a period of hiatus. S.M. Langworthy's American School enjoyed relative prosperity for at least the next five years. It was S.M. Langworthy who was the first to establish a systemized curriculum of lectures and clinical work; the first to publish any professional literature (a regular journal by 1903 and a textbook by 1906); the first to organize a professional association, the original American Chiropractic Association (1905); and the first to propose legislation to regulate chiropractic, the ill-fated Minnesota bill fought by D.D. Palmer in 1905.¹¹

Langworthy's attempts to "dress up" chiropractic to resemble a modern science brought only sneers from Davenport. How ironic that it would be his beacon that would save the Palmer School and chiropractic!

In September 1906, the American School of Chiropractic published the profession's first textbook — *Modernized Chiropractic*. Its authors were S.M. Langworthy, Oakley Smith and Minora Paxson, each of them having studied under D.D. at his early School and Cure in Davenport.¹² Little did the Palmers realize the importance of this text in their initial ridicule. But here is how Langworthy and his collaborators provided the working formula to save chiropractic. They wrote:¹³

Many of the most learned authorities in the medical ranks maintain marked differences in their pathological hypotheses, but because of such differences it does not follow that they are of different schools. That which is the real foundation of a "separate school of healing" is its *philosophy, its practice, the science and art — all of which is peculiar to itself.*

As Langworthy pointed out, it is not enough to announce the discovery of a new science, as Palmer had done. It is also necessary that the new science be supplemented with its own philosophy. *Modernized Chiropractic* purported to establish for the first time these ideas: "A correct philosophy, a well-developed technique, a dependable system of diagnosis, and a reliable and extensive system of correction."¹⁴

In Langworthy, Tom Morris had discovered gold. *Chiropractic* had defined the difference between chiropractic and osteopathy in terms of both of philosophy and technique. Because of Langworthy, Morris could present evidence that the brain was the source of the "unseen power" in the body, not the blood, as the osteopath and medical doctor preached. In his book, Langworthy exhaus-

tively and convincingly demonstrated spinal mechanics, the "spinal windows" (foramina), the interconnections of the autonomic system, and the possible aberrations of the health and well-being of the human body. Just as convincingly, it demonstrated the effects of the "chiropractic thrust" as opposed to other spinal techniques.¹⁵

Morris must have been incredulous at the hostility the Palmers dispatched toward their colleagues at the American School. Feeling secure with the argument he needed to present a defense, Morris began to coach his expert witnesses. They included Dr. W. Davy Thomas and Rev. Albert L. Wood, both recognized scholars in philosophy.¹⁶ Why he did not call upon either Dr. Langworthy or his collaborators is fodder for conjecture and will probably remain a lost chapter in chiropractic history. The well-educated defendant, Shegataro Morikubo, smeared by vicious innuendo in the press, would make an excellent witness as would, in fact, Dr. B.J. Palmer. The defense was now ready.

Before a large and curious audience, selection of a jury proved difficult on the opening day of the trial; finally, however, four citizens were chosen. The indictment was read by the court clerk: "Shegataro Morikubo was being charged with violating the law by endeavoring to practice medicine and surgery and osteopathy, all of which were regulated by the State Board of Medical Examiners, and that the defendant held himself out as a physician, surgeon and osteopath — and used the title of doctor in front of his name."¹⁷ The loose wording of the complaint was an opportunity for the defense. Morris asked the court to amend the charge to "practicing osteopathy without a license" since the defendant was only utilizing manipulation. Not suspecting a trap, the prosecution agreed. By this maneuver, Morris showed that osteopathy and chiropractic were not the same thing, as the State contended, and, therefore, his client could not be prevented from practicing.¹⁸

The State, with its own arsenal of experts from medicine and osteopathy, found itself increasingly on the defensive as Morris relentlessly pursued his argument that *only* chiropractic recognized the supremacy of the nervous system, as Langworthy had first stated in his journal in 1904. The testimony of Morikubo and Palmer were equally convincing in demonstrating that the techniques of osteopathy and chiropractic were vastly different and applied for different reasons. For good measure, Morris put Dr. Charles Linning on the stand — an osteopath-chiropractor from Oakland, California. Linning, who had studied at both the California College of Osteopathy and the Palmer School of Chiropractic, lent substance to the claimed technical differences between the two sciences.¹⁹

After two days of testimony, the jury required less than a half hour to reach its verdict. On August 15, 1907, Morikubo was acquitted. Tom Morris had successfully

presented his argument that the function of the nervous system through the "unseen power" in the brain was the philosophy that distinguished the science of chiropractic from all other sciences. But what would this mean?

Having "inherited" what his father had founded and developed, B.J. immediately took steps to "dress up" chiropractic again. In the December 1907 issue of his journal, *The Chiropractor*, appeared the following announcement:²⁰

HISTORICAL: Chiropractic was discovered by D.D. Palmer in September, 1895.

His son, B.J. Palmer, D.C., Ph.C., has since that time developed it into a well-defined non-therapeutical *philosophy*, science and art that has no resemblance to any other science.

For the first time, B.J. laid claim to the designation as chiropractic's "developer." The original Palmer book published by B.J. in 1906 giving D.D. and himself authorship credit was withdrawn from further circulation and would never again be mentioned in a publication from the PSC printery. B.J. had completely abandoned his father's script. As the "developer," he was to use the script of S.M. Langworthy. He adopted Langworthy's term "subluxation" and the expression "intervertebral foramina," and began to address the brain as the "unseen power" — the origin of the "life force," just as Langworthy had been doing since 1903.

Chiropractic had entered the realm of philosophy where, now, all phenomena could be explained. This, B.J. introduced in a ponderous definition: "Chiropractic is a philosophy of biology, theology, health, disease, death, the cause of disease..." not as speculation but as absolute truth.²¹

Whereas D.D. Palmer had originally dealt in the realities of life — the structure of the body — the new chiropractic could explain the mysteries of life. No one had yet explored the invisible world of chiropractic philosophy. For B.J., it became an opportunity that he had not ever imagined. Soon, he would portray himself in terms that left little room for role-sharing and no doubt at all as to his self-perceived authority when he wrote this:²²

Dr. B.J. Palmer, D.C., Ph.C., is the student, author, lecturer, teacher and defender of any phase of Chiropractic philosophy, science and art — anywhere — at any time.

He is the Developer of the Philosophy, Science and Art of Chiropractic.

He is the Secretary and Philosophical Counsel of the Chiropractors Association.

(The Ph.C. degree — Philosopher of Chiropractic — was also self-granted.)

With every justification, historians might wonder

how B.J. Palmer, with little formal education, seemed to possess overnight the wisdom and capacity for original philosophical thought and become the "philosophical counsel" to the Universal Chiropractors Association. Did B.J. have a secret mentor in Tom Morris? Was Morris, in fact, the real philosopher of chiropractic?

After his successful defense of chiropractic in the Morikubo case in 1907, Tom Morris became lieutenant-governor of Wisconsin, a post he had vigorously pursued. During this time, he proved eminently helpful in the passage of the country's first workman's compensation law. But in 1914 his visions were shattered when, as the Republican candidate for governor, he was soundly defeated. In spite of the support of the popular Robert La Follette, the issue of religion was raised against him. Morris was Roman Catholic. Thereafter, he left politics forever and enlisted himself totally in the cause of chiropractic as national counsel of the Universal Chiropractors Association.²³

It is not difficult to believe that the erudite Tom Morris was the brains behind B.J. He had already developed the idea of chiropractic philosophy in his masterful courtroom presentation in La Crosse and had carefully coached his witnesses, including B.J. Palmer. It is known that when Morris broke away during the tumult of the 1925 convention, an avalanche of decline was set in motion, to claim Palmer dominance and the UCA itself as its victims.

What assessment can be made by future historians of chiropractic's attempted merging of science and dogma after the 1907 trial in Wisconsin? In respect to its time and place, Tom Morris's defense saved the profession

from a probable death; yet his break with B.J. Palmer in the 1920s was precipitated by anarchy within the ranks. Chiropractic philosophy had become a philosophy of disunity. Soon, the UCA adopted a policy of "Pure, Straight and Unadulterated (P.S.U.)" chiropractic. Anything more was "indefensible."

The vision of Tom Morris of a rebuilt and unified profession based on a common philosophy became obscured within two decades (1907-27), in spite of the demonstrated success of the Universal Chiropractors Association, reportedly 3,300 court cases.²⁴ Many within the profession were already distressed at what they perceived to be an "unscientific and cultist" persuasion as the UCA, in many instances, "interfered" in local legislative efforts. "But a single touch by the tutelary genius, 'B.J.,' was needed to shatter the chiropractic realm with darts of controversy," Turner wrote.²⁵ Within twenty years, chiropractic dogma as proclaimed by B.J. Palmer from his philosophical ivory tower would effectively end.

And what of Dr. Shegataro Morikubo, the first chiropractor to experience discrimination for both his race and his profession? His trial alone was a documentation of unusual courage. But in the post-trial rhetoric and the threat of a new prosecution he chose to leave Wisconsin rather than renew the battle. It is known that Morikubo moved to the more cosmopolitan setting of Minneapolis, Minnesota, where he practiced unmolested and, apparently, with some success. He was in his mid-fifties when he died in 1933.²⁶

A footnote in chiropractic history, Dr. Shegataro Morikubo still lives in spirit. He probably would have preferred it just that way.

REFERENCES

¹Mawhiney, R.B., *Chiropractic in Wisconsin, 1900-1950* (Wisconsin Chiropractic Assn., 1984), p. 33

²Urdang, L., ed., *The Timetables of American History* (New York, Simon & Schuster, 1981), p. 276

³Mawhiney, p. 33

⁴Ibid

⁵Ibid

⁶Turner, C., *The Rise of Chiropractic* (Los Angeles, Powell Publishing Co., 1931), p. 177

⁷Lerner, Cyrus (unpublished manuscript, 1951, Palmer College Archives), p. 594.

⁸Gilkey, G., *A History of the University of Wisconsin — La Crosse* (Madison, University of Wisconsin Press, 1981), p. 42

⁹Lerner, p. 631

¹⁰Gielow, V., *Old Dad Chiro: A Biography of D.D. Palmer* (Davenport, Iowa, Bawden Bros., Inc., 1981), p. 112

¹¹Lerner, pp. 586-593

¹²Ibid

¹³Ibid

¹⁴Ibid

¹⁵Ibid

¹⁶Ibid, p. 614

¹⁷Ibid, pp. 608-609

¹⁸Ibid

¹⁹Mawhiney, p. 34

²⁰Lerner, p. 624

²¹Palmer, B.J., *The Chiropractor*, December 1907

²²Lerner, p. 631

²³Lerner, pp. 640-641

²⁴Turner, p. 178

²⁵Ibid

²⁶Mawhiney, p. 36